SUPREME COURT OF THE UNITED STATES.

No. 187.

THE HOWARD FIRE INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

GRENVILLE M. CHASE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MAINE.

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1 UNITED STATES OF AMERICA, *District of Maine, ss:*

OFFICE OF THE CLERK OF THE CIRCUIT COURT OF THE UNITED STATES.

I, Geo. F. Emery, clerk of the circuit court of the United States for the district of Maine, hereby certify that the documents hereunto annexed contain the original writ of error and citation and true and perfect copies of the record and proceedings in a suit determined in said court, wherein Grenville M. Chase was the original plaintiff, and the Howard Fire Insurance Company was defendant.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court this first day of November, A. D. 1864.

GEO. F. EMORY, *Clerk.*

2 *Writ of error.*

UNITED STATES OF AMERICA:

The President of the United States to the honorable the judge of the circuit court of the United States for the district of Maine, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, between Grenville M. Chase, of Portland, in the county of Cumberland and State of Maine, and the Howard Fire Insurance Company, a corporation created by the legislature of the State of Massachusetts, and having an established place of business and a duly appointed agent at Portland, in the county of Cumberland, a manifest error hath happened, to the great damage of the said insurance company, as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

3 Witness the Honorable Roger B. Taney, chief justice of the said Supreme Court, this eighth day of October, in the year of our Lord one thousand eight hundred and sixty-four.

GEO. F. EMERY, *Clerk.*

Allowed. NATHAN CLIFFORD,
Associate Jus. Sup. Court of the U. S.

4 *Citation.*

The United States of America to Grenville M. Chase, of Portland, in the county of Cumberland and State of Maine, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Maine, wherein the Howard Fire Insurance Company, a corporation created by the legislature of the State of Massachusetts, and having an established place of business and a duly appointed agent at Portland, in the county of Cumberland, are plaintiffs in error, and you are defendant in error, to shew cause, if any there be, why the judgment rendered against the said plaintiff in errror, as in the

said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Roger B. Taney, chief justice of the Supreme Court, this eighth day of October, in the year of our Lord one thousand eight hundred and sixty-four.

NATHAN CLIFFORD,
Associate Jus. of Sup. Court of the U. S.

5 DISTRICT OF MAINE, *ss*, OCTOBER 15th, A. D. 1864.

I have this day served the within precept upon the within-named Grenville M. Chase, by delivering to him in hand a true and attested of the within precept.

F. A. QUINBY,
U. S. Dep't Marshal, Dis't of Maine.

Fees.

Service	$2 00
Trav. 1 m	06
Copy	1 00
	3 06

6 *Copy of bond.*

Know all men by these presents that the Howard Fire Insurance Company, a corporation created by the laws of the commonwealth of Massachusetts, and having its established place of business in Boston, in the said commonwealth, as principal, and Joshua W. Daniels, of Lowell, in the State of Massachusetts, and Josiah G. Abbott, of Boston, in said State of Massachusetts, and Edward Fox and M. M. Butler, of Portland, in the State of Maine, are holden and stand firmly bound and obliged unto Granville M. Chase, of Portland, in the State of Maine, in the sum of eleven thousand dollars, to be paid to the said Granville M. Chase, his executors, adminstrators, or assigns, to the which payment, well and truly to be made, we do bind ourselves, our heirs, executors or administrators, firmly by these presents.

Sealed with our seals, dated the fourteenth day of October, in the year of our Lord one thousand eight hundred and sixty-four.

The condition of the above obligation is such that whereas the above-bounden Howard Fire Insurance Company has prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in favor of the said Granville M. Chase, in a certain suit wherein he, the said Granville M. Chase, was plaintiff, and the said Howard Fire Insurance
7 Company was defendant, by the circuit court of the United States, begun and holden at Portland, for the first circuit, district of Maine, on the twenty-third day of September, in the year of our Lord one thousand eight hundred and sixty-four:

Now, therefore, if the said Howard Fire Insurance Company shall prosecute its said writ of error to effect, and answer all damage and costs if it shall fail to make good its plea, then this obligation shall be void; otherwise, the same shall remain in full force.

HOWARD FIRE INS. Co., [L. S.]
By J. W. DANIELS, *Prest.*
J. G. ABBOT. [L. S.]
J. W. DANIELS. [L. S.]
EDWARD FOX. [L. S.]
M. M. BUTLER. [L. S.]

Approved.

ASHUR WARE,
Dist. Judge of Me. and Associate Judge of circuit court.

Oct. 14, 1864.

8 *Copy of original judgment.*

MAINE DISTRICT, *ss:*

First circuit.

At a term of the circuit court of the United States for the first circuit, begun and holden at Portland, within and for the district of Maine, on the twenty-third day of September, in the year of our Lord one thousand eight hundred and sixty-four.

Present: The Honorable Nathan Clifford, associate justice of the Supreme Court.

Grenville M. Chase, of Portland, in the county of Cumberland, mason, plaintiff, against the Howard Fire Insurance Company, a corporation created by the legislature of the State of Massachusetts, and having an established place of business and a duly appointed agent at Portland, in the county of Cumberland, defendant, in a plea of the case for that one William Chase, on the twenty-fifth day of November, in the year of our Lord eighteen hundred and fifty-nine, was the owner and possessor in trust of the Union Congregational brick and slated church, situate on the southerly side of Congress street, in Portland, of the value of thirty-two thousand dollars, and so continued until the injury and destruction of the same by fire, as hereinafter mentioned; and said insurance company, on the same day, in con-
9 sideration of a premium in money then and there paid to them therefor by said William Chase, made a policy of insurance upon said property, and thereby promised and agreed to and with said William to insure upon said property the sum of five thousand dollars, payable, in case of loss, to the plaintiff, and to make good unto the said assured all such immediate loss or damage not beyond the sum insured nor beyond the actual value of the property insured at the time of the loss or damage, nor beyond such sum as would enable the insured to replace or restore the property lost or damaged as should happen by fire not taking place by means of any invasion, insurrection, riot, or civil commotion, or of any military or usurped power, or in consequence of the explosion of any steam-boiler or of gunpowder on storage, to the property aforesaid from the twenty-fifth day of November, A. D. eighteen hundred and fifty-nine, at noon, unto the twenty-fifth day of November, A. D. eighteen hundred and sixty, at noon, the amount thereof to be paid in sixty days after notice and proof of the same in conformity to the terms and provisions of said policy, or to repair, rebuild, or replace the property lost or damaged with other of like kind or quality, (at the election of said company,) within a reasonable time, upon condition that the
10 assured in case of loss should forthwith render to said company a particular statement in writing, signed and sworn to by him, setting forth the value of the property insured, his interest therein, all other insurance thereon, the purpose for which and the persons by whom the building insured or containing the property insured and the several parts thereof were used, when and how the fire originated, so far as he knows, and if required submit his books of account and other proper vouchers to the examination of said company, and permit extracts and copies thereof to be made; and the said policy of insurance so made as aforesaid, and the contract, promise, and agreement aforesaid, was upon the expiration thereof, in consideration of sundry premiums in money paid therefor, continued in force from time to time until the twenty-fifth day of November, A. D. eighteen hundred and sixty-two, at noon; and the plaintiff avers that afterwards and before the expiration of the time limited in said policy and the several extensions thereof, to wit, on the fifteenth day of March, A. D. eighteen hundred and sixty-two, the property aforesaid, insured as aforesaid, was accidentally and by misfortune destroyed or damaged by fire, not taking

place by means of any invasion, insurrection, riot, or civil commotion, or of any military or usurped power, or in consequence of the explosion of any steam-boiler, or of gunpowder on storage; of which loss and damage the assured forthwith gave notice to said company, and forthwith and
11 more than sixty days prior to the purchase of this writ furnished to said company the proofs of loss, and rendered to them under oath the particular statement in writing required by the terms and conditions of said policy, and faithfully and particularly complied with all the conditions of said policy and agreement. Yet though requested, and though sixty days after such notice and proof of said loss and rendering of such statement and compliance with said conditions have elapsed, the said company have not rebuilt, or replaced, or repaired the property aforesaid lost or damaged, nor paid said loss or damage—yet the said defendants though requested have not paid the same, but neglect so to do, to the damage of the said plaintiff, as he says, the sum of nine thousand dollars. This action was brought and entered in the supreme judicial court of the State of Maine, holden at Portland, within and for the county of Cumberland, on the second Tuesday of October, in the year of our Lord one thousand eight hundred and sixty-two, and on the petition of said defendant removed from said supreme judicial court to the circuit court of the United States for Maine district; and at a term of the said circuit court holden at Portland, within and for said district of Maine, on the twenty-third day of April, in the year of our Lord one thousand eight hundred and sixty-three, said action was entered and copies of the case filed in court on the first day of its
12 session by said defendant, according to the provisions of the statute of the United States in such case made and provided. And said cause was thence continued from term to term to the present term. And now said defendants come and for plea say they were premised in manner and form as the plaintiff in his writ has alleged against them, and of this put themselves on the country.

By their att'ys, FOX & BUTLER.

And plaintiff likewise, by

JOHN RAND & H. P. DEANE, *his Att'ys.*

And now before a jury duly impanneled and sworn, after a full hearing of the evidence, both parties, by their respective counsel, request the court to give certain rulings and instructions to the jury, and the court does thereupon give to the jury rulings and instructions, to which the defendant does then and there propose his exceptions in writing and requests the court to put their seal to the defendant's said bill of exceptions, which is done accordingly, and the same is then and there placed on file; and said cause is thereupon committed to the jury, who, after mature deliberation thereon, return their verdict that the defendant did promise in manner and form as the plaintiff has alleged, and assess damages in the sum of five thousand two hundred and twenty-eight dollars and ninety-nine cents. All which being seen and understood, it is therefore considered by the court here that the said Grenville M. Chase recover against the said Howard Insurance Company said sum of five thousand two hundred twenty-eight dollars and ninety-nine cents debt or damage and costs of suit, taxed at eighty-three dollars and fifty-six cents.

Attest: GEO. F. EMERY, *Clerk.*

13 *Copy of original writ.*

STATE OF MAINE, *Cumberland, ss:*

To the sheriffs of our several counties, or either of their deputies, greeting:

We command you to attach the goods and estate of the Howard Fire Insurance Company, a corporation created by the legislature of the State of

Massachusetts, and having an established place of business and a duly appointed agent at Portland, in the county of Cumberland, to the value of nine thousand dollars, and summon the said company (if they may be found in your precinct) to appear before our justices of our supreme judicial court next to be holden at Portland, within and for said county of Cumberland, on the second Tuesday of October, A. D. 1862, then and there in our said court to answer unto Grenville M. Chase, of said Portland, mason, in a plea of the case, for that one William Chase, on the twenty-fifth day of November, in the year of our Lord eighteen hundred and fifty-nine, was the owner and possessor in trust of the Union Congregational brick and slated church, situate on the southerly side of Congress street, in Portland, of the value of thirty-two thousand dollars, and so continued until the injury and destruction of the same by fire as hereinafter mentioned; and said insurance company on the same day, in consideration of a premium in money then and
14 there paid to them therefor by said William Chase, made a policy of insurance upon said property, and thereby promised and agreed to and with said William to insure upon said property the sum of five thousand dollars, payable, in case of loss, to the plaintiff, and to make good unto the said assured all such immediate loss or damage not beyond the sum insured nor beyond the actual value of the property insured at the time of the loss or damage, nor beyond such sum as would enable the insured to replace or restore the property lost or damaged, as should happen by fire, not taking place by means of any invasion, insurrection, riot, or civil commotion, or of any military or usurped power, or in consequence of the explosion of any steam-boiler, or of gunpowder on storage, to the property aforesaid, from twenty-fifth day of November, A. D. eighteen hundred and fifty-nine, at noon, unto the twenty-fifth day of November, A. D. eighteen hundred and sixty, at noon, the amount thereof to be paid in sixty days after notice and proof of the same, in conformity to the terms and provisions of said policy, or to repair, rebuild, or replace the property lost or damaged with other of like kind or quality, (at the election of said company,) within a reasonable time, upon condition that the assured, in case of loss, should forthwith render to said company a particular statement in writing, signed and sworn to by him, setting forth the value of the property insured, his inter-
15 est therein, all other insurance thereon, the purpose for which, and the persons by whom, the building insured, or containing the property insured, and the several parts thereof, were used; when and how the fire originated, so far as he knows, and, if required, submit his books of account and other proper vouchers to the examination of said company, and permit extracts and copies to be made. And the said policy of insurance so made as aforesaid, and the contract, promise, and agreement aforesaid was, upon the expiration thereof, in consideration of sundry premiums in money paid therefor, continued in force from time to time until the twenty-fifth day of November, A. D. eighteen hundred and sixty-two, at noon. And the plaintiff avers that afterwards, and before the expiration of the time limited in said policy and the several extensions thereof, to wit, on the fifteenth day of March, A. D. eighteen hundred and sixty-two, the property aforesaid, insured as aforesaid, was accidentally and by misfortune destroyed or damaged by fire, not taking place by means of any invasion, insurrection, riot, or civil commotion, or of any military or usurped power, or in consequence of the explosion of any steam-boiler, or of gunpowder on storage; of which loss and damage the assured forthwith gave notice to said company, and
16 forthwith, and more than sixty days prior to the purchase of this writ, furnished to said company the proofs of loss, and rendered to them, under oath, the particular statement in writing required by the terms and conditions of said policy, and faithfully and particularly complied with all

the conditions of said policy and agreement; yet, though requested and though sixty days after such notice and proof of said loss and rendering of such statement and compliance with said conditions have elapsed, the said company have not rebuilt or replaced or repaired the property aforesaid lost or damaged, nor paid said loss or damage.

STATE OF MAINE, *Cumberland, ss:*

CLERK'S OFFICE SUP. JUD. COURT.

I, Daniel W. Fessenden, clerk of all the judicial courts in the county of Cumberland, do hereby certify that the foregoing is a true copy of the original now on file in this office.

In testimony whereof, I have hereunto set my hand and affixed the seal [L. S.] of said court this eighteenth day of March, A. D. eighteen hundred and sixty-three.

17 *Copy of officer's return.*

CUMBERLAND, *ss:*

AUGUST 28, 1862.

By virtue of the within writ, I have attached a chip as the property of the within-named company, and summoned them to appear at court, by giving in hand to John W. Munger, agent of said company, a true and attested copy of the within writ.

OREN KING, *Deputy Sheriff.*

Fees: Service	$0	50
Travel		4
Copy	3	00
	3	54

18 *Copy of petition and order for removal.*

To the hon. justices of the supreme judicial court of the State of Maine, now in session at Portland, within and for the county of Cumberland, in said State:

Humbly shows the Howard Fire Insurance Company, a corporation created by the legislature of the State of Massachusetts, and having its principal place of business at Lowell, in said State, where the president and the majority of its directors reside; also having a place of business at Boston, where some of the stockholders live; and also having members, corporators, and stockholders residing in and being citizens of said State—

That a suit has been commenced in said court against your petitioners by Granville M. Chase, a citizen of said State of Maine, returnable to this hon. court at the present term thereof, and that the matter in dispute exceeds the sum or value of four thousand dollars, exclusive of costs, to be made to appear to the satisfaction of said justices; that the stockholders of the said Howard Fire Insurance Co., at the time of the commencement of the plaintiff's action against the defend'ts, and of the service of the writ upon said comp'y, were citizens of the State or commonwealth of Massachusetts, and that they were not citizens of the State of Maine; that they still are citizens of said State of Massachusetts.

19 Wherefore your petitioners, the defendants in said action, at the return term of said writ, and at the time of entering their appearance in this State court, file this their petition for the removal of said cause for trial unto the next circuit court of the United States, to be held at Portland, within and for the district of Maine, the twenty-third of April next, being the district of the United States wherein said suit is pending.

And your petitioners pray for the removal of the same, and her and now offer good and sufficient surety for their entering in said circuit court of the United States, on the first day of its session, copies of said process against them, and for their appearing therein.

And your petitioners further represent that no special bail was originally required in said suit, as will appear on inspection of the writ and the officer's return thereon.

And they pray this hon. court to accept the said surety, and to proceed no further in said cause.

HOWARD FIRE INS. CO.,
Per JOHN W. MUNGER.

And now, on the 6th day of the said October term, it is ordered that the action be removed to the circuit court of the United States for the district of Maine.

A true copy of petition and order of court thereon.

Attest:

D. W. FESSENDEN, *Clerk.*

Copy of pleadings.

20 Circuit court, Me. district, Sept. term, 1864.

G. M. CHASE
vs.
HOWARD FIRE INS. CO.

And now said defendants come, and for plea say they never promised in manner and form as the plaintiff in his writ has alleged against them, and of this put themselves on the country.

By their att'ys,

FOX & BUTLER.

And plaintiff likewise, by

JOHN RAND & H. P. DEANE.

21 UNITED STATES OF AMERICA, *Maine District:*

Circuit court of the United States, September term, 1864.

GRANVILLE M. CHASE
v.
THE HOWARD FIRE INS. CO.

Upon the trial of the above-entitled cause, the defendants filed their bill of exceptions, which was allowed by the court and is in the words and figures following, viz:

Bill of exceptions.

UNITED STATES OF AMERICA, *Maine District:*

Sept. T., 1864.

GRANVILLE M. CHASE
v.
THE HOWARD FIRE INSURANCE COMPANY.

Be it remembered, that at a term of the circuit court of the United States for the first circuit, begun and holden at Portland, within and for the district of Maine, on the twenty-third day of September, A. D. 1864, by the Honorable Nathan Clifford, circuit judge, came Granville M. Chase, of Portland, in the State of Maine, and a citizen of said State of Maine, and by a writ of

assumpsit, declared against the Howard Fire Insurance Co., a corporation created by the laws of the commonwealth of Massachusetts, and a citizen of, and doing business in, said Massachusetts, said action having commenced on the twenty-second day of August, 1862, by writ returnable in the supreme judicial court, for the county of Cumberland and State of Maine, at
22 the term holden at Portland, in said county, on the second Tuesday of Octo., 1862, and the matter in dispute exceeding five hundred dollars exclusive of costs, the said Howard Fire Insurance Co., at the time of entering their appearance in said suit before the supreme judicial court of Maine, filed their petition for the removal of said cause for trial unto the next circuit court to be held in this district, and offered good and sufficient surety for entering in such circuit court, on the first day of its session, copies of the process. And the said Howard Fire Insurance Company did, on the first day of the session of the circuit court in this district next after the second Tuesday of Octo., A. D. 1862, viz: at the session of the circuit court held at Portland, in said district, on the twenty-third day of April, A. D. 1863, appear and enter in said circuit court said action and copies of said process against them; and the said Granville M. Chase, the plaintiff, also then and there appeared, and said action was thence continued from term to term of said circuit court until the present term, when the parties appeared and the said defendants pleaded the general issue, which issue was joined by the plaintiff, as by the writ and declaration and the pleas aforesaid, all of record, will appear. And thereupon said cause came on for trial before said circuit court, at said September term, before a jury empannelled for that purpose, and the said plaintiff, to maintain and prove the issue on his part, introduced in evidence a policy of insurance, the execution of which was admitted on the part of defendants, which policy was as follows, viz:

23 No. 15,456.

HOWARD FIRE INSURANCE COMPANY, *Lowell, Mass.*

By this policy of insurance, the Howard Fire Insurance Company, in the city of Lowell, county of Middlesex, in consideration of twenty-five dollars to them paid by the assured hereinafter named, the receipt whereof is hereby acknowledged, do insure William Chase, of Portland, Me., payable, in case of loss, to Grenville M. Chase, against loss or damage by fire to the amount of five thousand dollars, on the Union Congregational brick and slated church, situate on the southerly side of Congress street, in said Portland, $5,000 insured by Springfield Fire and Marine Ins. Co., $5,000 other insurance in City Fire Ins. Co., $5,000 insured by Continental Ins. Co., N. Y.

And said company do hereby promise and agree to make good unto the said assured, his executors, administrators, and assigns, all such immediate loss or damage as shall happen by fire to the property as above specified from the twenty-fifth day of November, one thousand eight hundred and fifty-nine, at noon, unto the twenty-fifth day of November, one thousand eight hundred and sixty, at noon, the amount thereof to be paid in sixty days after notice and proof of the same, as herein required, or the property lost or damaged to be repaired, rebuilt, or replaced with other of like kind and quality (at the election of said company) within a reasonable time.

But this company shall in no event be liable till the actual payment of the premium, nor beyond the sum insured, nor beyond the actual value of
24 the property insured at the time of the loss or damage, nor beyond such sum as will enable the insured to replace or restore the property lost or damaged, nor for any loss or damage of any books of account, bills, notes, bonds, deeds, or other written instruments, money, bullion, jewels, plates, medals, paintings, statuary, sculpture, or other curiosities, unless by

special agreement herein expressed, nor to make good any loss or damage by fire or otherwise which may happen or take place by means of any invasion, insurrection, riot, or civil commotion, or of any military or usurped power, or in consequence of the explosion of any steam-boiler or of gunpowder on storage, (excepting so far as the value of the property, after such explosion, shall be destroyed by fire,) nor to make good any loss by theft, or damage sustained in consequence of neglect of the assured to use all reasonable diligence in saving and protecting the property. And there can be no abandonment to the insurers of the property insured.

And this policy is made and accepted upon the following express conditions, viz: That if, without the consent of this company, expressed in this policy, the assured shall now have, or hereafter make, any other contract of insurance against loss by fire on the property, or any part thereof, hereby insured, whether such other contract shall be valid or not as against the parties thereto, or either of them, or if the above-mentioned premises, or any part thereof, shall, at any time during the term of this policy, be used with
25 the assent of the assured for the purpose of vending or storing therein gunpowder, camphene, or other explosive substance, or for carrying on therein any trade or business not specified in the application or assented to in this policy, or if camphene or other explosive fluid shall be used therein for lighting the same, or if the risk shall be increased by any means whatever within the control of the assured, or if the title to the property insured, or any part thereof, shall be changed, or this policy, or any interest therein, shall be assigned, or if the assured shall in any way attempt to defraud said company, then, and in either such case, this policy shall be void.

In case of loss the assured shall forthwith render to said company a particular statement in writing, signed and sworn to by him, setting forth the value of the property insured, his interest therein, all other insurance thereon, the purpose for which and the persons by whom the building insured or containing the property insured and the several parts thereof were used, when and how the fire originated, so far as he knows, and, if required, submit his books of account and other proper vouchers to the examination of said company and permit extracts and copies thereof to be made. Where personal property is damaged the assured shall forthwith cause it to be put in as good order as the nature of the case will admit, assorting and arranging the various articles according to their kinds, and shall cause to
26 be made and delivered to said company an inventory of all articles lost or damaged, naming the quantity and cost of each kind and the damage on each item. And in case of any other contract of insurance upon the property hereby insured, whether such other contract shall be valid or not, as against the parties thereto, or either of them, the assured shall not, in case of loss or damage, be entitled to recover of this company any greater portion of the loss or damage sustained than the amount hereby insured shall bear to the whole amount insured on said property.

No suit or action at law or in equity shall be commenced or maintained against this company by reason of this policy, unless the same shall be commenced within two years after the cause thereof shall have first occurred. And whenever this company shall pay any loss, the assured shall assign to said company all his rights to recover satisfaction therefor from any other party or parties (except for insurance) or prosecute therefor at the charge and for the benefit of said company if requested.

The application for this insurance is a part of this contract and a warranty on the part of the assured, and this company may at any time cancel this policy by giving reasonable notice and tendering to the assured the unexpired portion of the premium pro rata.

No agent of this company is authorized to do any act whatever which shall in any way or manner change or alter the terms or conditions of
27 this policy.

In witness whereof, the said Howard Fire Insurance Company have caused these presents to be signed by their president and countersigned by their secretary, at their office, in the city of Lowell and commonwealth of Massachusetts, this 25th day of November, one thousand eight hundred and fifty-nine.

NATHAN ALLEN, *President.*
J. W. DANIELS, *Secretary.*
JOHN W. MUNGER, *Agent.*

Howard Fire Insurance Company of Lowell, Massachusetts.

Renewal receipt, No. 3,971.

LOWELL, *November* 24, 1860.

Received of William Chase twenty-five dollars, being the premium on five thousand dollars insured under policy No. 15,456, which is hereby continued in force one year, to wit, from the twenty-fifth day of November, 1860, until the twenty-fifth day of November, 1861, at noon.

NATHAN ALLEN, *President.*
J. W. DANIELS, *Secretary.*
J. W. M.

Howard Fire Insurance Company of Lowell, Massachusetts.

Renewal receipt, No. 4,479.

LOWELL, *November* 25, 1861.

Received of William Chase twenty-five dollars, being the premium on five thousand dollars insured under policy No. 15,456, which is hereby continued in force one year, to wit, from the twenty-fifth day of November, 1861,
28 until the twenty-fifth day of November, 1862, at noon.

NATHAN ALLEN, *President.*
J. W. DANIELS, *Secretary.*
J. W. M.

And said plaintiff also offered in evidence two certificates of the defendants, the execution of which was admitted, by which, in consideration of two premiums of twenty-five dollars each, paid by William Chase, said policy was renewed and continued in force from year to year until the twenty-fifth day of November, A. D. 1862.

The defendants objected to said policy and the renewals thereof as not admissible in evidence in this action on account of a variance between the interest insured by the policy and that set forth in the declaration in the writ. The court overruled the objection and admitted the policy to be given in evidence, to which ruling the defendants then and there excepted, and prayed that their said exception might be allowed.

Plaintiff also offered in evidence proof of loss, according to the provisions of the policy, bearing date June 19th, 1862, and served on defendants the 20th of the same month.

Plaintiff also offered in evidence a deed from William Chase and Sewall C. Chase to Wm. Chase, S. C. Chase, Josiah F. Day, John Yeaton, and John W. Munger, trustees, bearing date Jan'y 22, 1858, and recorded vol. 286, page 131; which deed is as follows, viz:

29 Whereas, at an adjourned meeting of the parish connected with the Union Congregational Church, held on the ninth day of January, A.

D. 1858, Wm. Chase, Sewall C. Chase, Josiah F. Day, John Yeaton, and John W. Munger were chosen trustees to receive a conveyance of the lot of land hereinafter described, with the building thereon, in trust for said Union Congregational Church and said parish, and to give their notes as trustees therefor in a certain sum, and to make conveyance of such pews in said house as have been already sold or may be sold hereafter:

Now, then, know all men that we, Sewall C. Chase and Wm. Chase, both of Portland, in the county of Cumberland and State of Maine, for a full and valuable consideration to us paid, the receipt whereof is hereby acknowledged, do hereby remise, release, bargain, sell, and convey unto Wm. Chase, Sewall C. Chase, Josiah F. Day, John Yeaton, and John W. Munger, all of Portland aforesaid, their survivors and successors in office, in trust as aforesaid, the following lot of land, with the buildings thereon and the appurtenances thereto appertaining, situate on the southerly side of Congress street, in said Portland, and described as follows, viz: Beginning at the middle of an elm tree at the westerly corner of Nathaniel Warren's land, thence westerly, on said Congress street eighty-eight feet and six inches, to land owned by the heirs of the late Isaac Ilsley, the southeasterly at right angles with
30 said Congress street, by the land of said heirs, eighty-five 5-10 feet, to the northeasterly corner of Henry E. Perley's land; thence easterly by said Perley's land thirty-nine feet to Wm. E. Edwards's land; thence northeasterly by said Edwards's land fifty feet to the northwesterly corner thereof; thence easterly by the same land forty-one 4-10 feet, to said Warren's land; thence northwesterly by said Warren's land one hundred twenty-two 9-10 feet, to the first-mentioned bounds, together with all right of way to said land from Park street, and between said Edwards's and Perley's houses, that were conveyed to said Ilsley in his lifetime. Said lot estimated to contain five thousand one hundred and fifty-two superficial or square feet, excepting and reserving so much of the above-described premises as has been conveyed to Henry E. Perley, including the right of damage.

Also, a certain other lot of land with the buildings thereon, more fully described in the deed of Adeline Edwards to said Sewall C. Chase and others, bearing date May 7, 1857, and recorded in Cumberland Registry Book 279, page 300, reference to which may be had for a more particular description. It being understood that the aforesaid grant and conveyance is made on the condition that the trustees named above shall pay or cause to be paid the debt hereinafter referred to, and any interest and costs that may ac-
31 crue thereon. Said lot of land, with the buildings thereon and the pews in said house, to be held, conveyed, and disposed of as hereinafter mentioned, and as may be hereafter determined by said parish, and said trustees, their survivors and successors, upon the understanding and condition that the property herein described and conveyed, is to be controlled, managed, and disposed of so as to promote the interest and welfare of the Union Congregational Church as now organized and established.

To have and to hold the above granted premises, with all the appurtenances thereto appertaining, unto said trustees, their survivors and successors, to their use and behoof forever, as aforesaid. And we, the said grantors, for ourselves and our heirs, do covenant with the said trustees, their survivors and successors, that we are lawfully seized in fee of the premises; that they are free of all incumbrances, except a mortgage to Nathan Cummings, to secure a note to him of $4,775, bearing date Jan'y 7, 1854, payable in five years; that we have good right and lawful authority to convey said premises to said trustees, their survivors and successors, to hold as aforesaid, and that we will, and our heirs, executors, and administrators, shall warrant and defend the same to said trustees, their survivors and successors against the claims and demands of all persons.

In witness whereof, we, the said Wm. Chase and Sewall C. Chase, with Ellen A. Chase, wife of said William, and Mary A. H. Chase, wife of
32 said Sewall, in token of their relinquishment of all right of dower in said premises, have hereunto set our hands and seals, on this twenty-second day of January, eighteen hundred and fifty-eight.

WILLIAM CHASE. [SEAL.]
ELLEN A. CHASE. [SEAL.]
SEWALL C. CHASE. [SEAL.]
MARY A. H. CHASE. [SEAL.]

Signed, sealed, and delivered in presence of—
EUNICE S. EATON,
MARY MUGFORD, to S. C. C. & M. A. H. C.

CUMBERLAND, *ss:* FEBRUARY *4th*, A. D. 1858.

Personally appeared the above-named William Chase and Sewall C. Chase, and acknowledged the above instrument to be their free act and deed, before me.

JAMES D. FESSENDEN,
Justice of the Peace.

Recorded according to the original. Received March 18, 1858, at 4 h. 45 p. m.
Attest: AUGUSTUS F. GERRISH, *Register.*

Copy of deed, William Chase *et al.* to trustees of Union Congregational Church, Portland.

CUMBERLAND, *ss:*

Registry of deeds. A true copy as recorded Book 286, page 131.
Attest: THOMAS HANCOCK, *Register.*

33 It was proved that the church took fire on the evening of 15th March, 1862, and was badly damaged, the witnesses estimating the cost of repairs from $6,500 to $16,000.

The defendants, for the purpose of showing that said Wm. Chase had not any insurable interest in the property at time of effecting the policy offered in evidence, duly authenticated copies from the registry of deeds of Cumberland County, of a mortgage of the church and lot in question made by said trustees to Wm. Chase, on the 27th day of January, A. D. 1858, which mortgage deed is in the words and figures following, to wit:

Know all men by these presents that we, William Chase, Sewall C. Chase, Josiah F. Day, John Yeaton, and John W. Munger, trustees of the Union Congregational Church, in our said capacity, in consideration of the sum of three thousand seven hundred and eighty-four dollars and seventy-nine cents paid by William Chase of Portland, in the county of Cumberland, the receipt whereof we do hereby acknowledge, do hereby give, grant, bargain, sell, and convey unto the said William Chase, heirs and assigns, forever, a certain lot of land, with the buildings thereon, and particularly described by metes and bounds of William Chase and Sewall C. Chase to the aforesaid trustees, dated January 22, 1858, reference being had to said deed for a more particular description of the premises.

To have and to hold the afore granted and bargained premises, with all the privileges and appurtenances thereof, to the said Chase, his heirs
34 and assigns, to him their use and behoof forever. And we do covenant with the said Chase, his heirs and assigns, that we are lawfully seized in trust in fee of the premises; that they are free of all incumbrances, except a mortgage for four thousand seven hundred and seventy-five

dollars due in 5 years, Jan'y 1, '57; that we have good right to sell and convey the same to the said Chase, to hold as aforesaid, and that we in our said capacity will warrant and defend the same to the said Chase, his heirs and assigns, forever, against the lawful claims and demands of all persons.

Provided, nevertheless, that if the said trustees, their survivors and successors, pay to the said Chase, his heirs, executors, administrators, or assigns, the sum of three thousand and seven hundred and eighty-four dollars and seventy-nine cents in one year from January 1st, 1858, with interest semi-annually, then this deed as also a certain note, bearing even date with these presents, given by the said trustees to the said Chase, to pay the sum and interest at the time aforesaid, shall both be void; otherwise, shall remain in full force.

In witness whereof, the said trustees have hereunto set their hands and seals this twenty-seventh day of January, in the year of our Lord one thousand eight hundred and fifty-eight.

WM. CHASE. [SEAL.]
SEWALL C. CHASE. [SEAL.]
JOSIAH F. DAY. [SEAL.]
JOHN YEATON. [SEAL.]
JOHN W. MUNGER. [SEAL.]

35 Signed, sealed, and delivered in presence of—
TOPPAN ROBIE, Jr.

CUMBERLAND, *ss:* PORTLAND, *March* 18, 1858.

Personally appeared the above-named Sewall C. Chase, and acknowledged the above instrument by him made and subscribed in his said capacity of trustee to be his free act and deed before me.

H. P. DEANE, *Justice of the Peace.*

Received March 18, 1858, at 4 o'clock 45 m. p. m., and recorded from the original by—

AUGUSTUS F. GERRISH, *Register.*

CUMBERLAND, *Registry of Deeds, ss:*

A true copy as recorded in Book 284, page 414.
Attest: THOMAS HANCOCK, *Register.*

PORTLAND, *May* 5, 1862.

I, Neal Dow, assignee of the mortgage within named, by Fred. N. Dow, my lawful attorney, duly authorised for this purpose, acknowledged full satisfaction for this mortgage and do hereby discharge the same.

FRED. N. DOW.

Attest: A. F. GERRISH.

Also an assignment of said mortgage, which is in the words and figures following, to wit:

Know all men by these presents that I, William Chase, the within-named mortgagee, for a valuable consideration to me paid by Josiah Dow and Neal Dow, both of Portland, in the county of Cumberland and State of Maine, the receipt whereof is hereby acknowledged, do hereby sell, assign, transfer, and make over to them, the said Josiah Dow and Neal Dow, their heirs and
36 assigns, all my right, title, and interest in and to the real estate herein mentioned, and the promissory note and the debt thereby secured, to have and to hold the same to the said Josiah Dow and Neal Dow, their heirs and assigns forever.

In witness whereof, I have hereunto set my hand and seal this first day of July, A. D. 1859.

[SEAL.] WM. CHASE.

Signed, sealed, and delivered in presence of—
CHAS. H. MOULTON.

CUMBERLAND, *ss:* JULY 1st, 1859.

Personally appeared the above-named William Chase, and acknowledged the above instrument to be his free act and deed, before me.

CYRUS CUMMINGS, *Justice of the Peace.*

Recorded according to the original. Received July 1, 1859, at 4 h. 25 m. p. m., the same being endorsed on mortgage deed recorded in Book 284, page 414.

Attest: AUGUSTUS F. GERRISH, *Register.*

William Chase to Josiah and Neal Dow.

CUMBERLAND, *ss:* REGISTRY OF DEEDS, *July* 18, 1863.

The within is a true copy of record as recorded in Book 294, page 323.

Attest: THOMAS HANCOCK, *Register.*

The execution of the original papers of which these were copies was admitted by plaintiff, and it was agreed by plaintiff that the copies were to be received in lieu thereof and with the same effect as the originals, if
37 the originals would have been admissible in evidence for the purpose stated. The plaintiff thereupon objected that the copy of the mortgage and the assignment thereof were not so admissible in evidence and did not shew that the said William Chase had no insurable interest in the property, and the court sustained the plaintiff's objections, and refused to allow these papers to be read in evidence to the jury for this purpose. The defendant then and there excepted to the ruling of the court refusing to allow the same to be so given in evidence, and prayed that such exception might be allowed.

The defendant alao read in evidence the policy of the Springfield Fire Insurance Company, dated Nov. 25, 1859, and renewals thereof and the receipt thereon, dated April 26, 1862; which policy, renewal, and receipt are in the words and figures following, to wit:

No. 331.—Springfield Fire and Marine Insurance Company, Springfield, Mass.

By this policy of insurance the Springfield Fire and Marine Insurance Company, in consideration of twenty-five dollars to them paid by the assured hereinafter named, the receipt whereof is hereby acknowledged, do insure the proprietors of Union Congregational Church against loss or damage by fire to the amount of five thousand dollars on a brick church, slate roof, occupied by the Union Congregational Church, and situated on the southerly side of Congress st., Portland, Me. $5,000; other insurance in Howard Fire Ins. Co., Lowell, Mass.; $5,000 Continental Ins. Co.; $5,000 in City
38 Fire Ins. Co., New Haven.

Reference to application No. 331.

And the said company do hereby promise and agree to make good unto the said assured, their executors, administrators, and assigns, all such immediate loss or damage, not exceeding in amount the sum insured, as shall happen by fire to the property as above specified from the twenty-fifth day of November, one thousand eight hundred and fifty-nine, (at 12 o'clock at noon,) unto the twenty-fifth day of November, one thousand eight hundred and sixty, (at twelve o'clock at noon,) the said loss or damage to be estimated

according to the true and actual value of the property at the time the same shall happen, and to be paid within sixty days after notice and proof thereof made by the assured, in conformity to the conditions annexed to this policy. Provided always, and it is hereby declared, that this company shall not be liable to make good any loss by theft, or any loss or damage by fire which may happen or take place by means of any invasion, insurrection, riot, or civil commotion, or of any military or usurped power. And provided further, that in case the assured shall have already any other insurance against loss by fire in the property hereby insured, not notified to this company and mentioned in or endorsed upon this policy, then this insurance shall be void and of no effect, and if the said assured or their assigns shall hereafter make any other insurance on the same property, and shall not with all
39 reasonable diligence give notice thereof to this company, and have the same endorsed on this instrument, or otherwise acknowledged by them in writing, this policy shall cease and be of no further effect; and if any subsequent insurance should be made upon the property hereby insured, which, with the sum or sums already insured, should, in the opinion of the said Springfield Fire and Marine Insurance Company, amount to an over insurance, said company reserve to themselves the right of canceling this policy, by paying to the insured the unexpired premium pro rata; and in case of any other insurance upon the property hereby insured, whether prior or subsequent to the date of this policy, the asured shall not, in case of loss or damage, be entitled to demand or recover of this company any greater portion of the loss or damage sustained than the amount hereby insured shall bear to the whole amount insured on the said property. And it is agreed and declared to be the true intent and meaning of the parties hereto that in case the above-mentioned premises shall at any time after the making and during the continuance of this insurance be appropriated, applied to, or used for the purpose of carrying on or exercising therein any trade, business, or vocation denominated hazardous or extra hazardous, or specified in the memorandum of special rates, in the terms and conditions annexed to this policy, or for the purpose of keeping or storing therein any of the articles,
40 goods, or merchandise in the same terms and conditions denominated hazardous or extra hazardous, or included in the memorandum of special rates, unless herein otherwise especially provided for or hereafter agreed by this company in writing, and added to or endorsed upon this policy, then and from thenceforth, so long as the same shall be so appropriated, applied, used, or occupied, these presents shall cease, and be of no force or effect. And it is moreover declared that this insurance is not intended to apply to or cover any books of account, written securities, deeds, or other evidences of title to lands, nor to bonds, bills, notes, or other evidences of debt, nor to money or bullion, and that this policy is made and accepted in reference to the conditions hereto annexed, which are to be used and resorted to in order to explain the rights and obligations of the parties hereto, and in all cases not herein otherwise specially provided for.

This policy shall not be valid until countersigned by J. W. Munger, agent of said Springfield Fire and Marine Insurance Company.

In witness whereof, the said Springfield Fire and Marine Insurance Company have caused these presents to be signed by their president, and attested by their secretary, at their office, in Springfield, Massachusetts.

C. FREEMAN, *President.*

Attest: WM. CONNER, Jr., *Secretary.*

Countersigned at Portland, this 25 day of November, A. D. 1859.

JOHN W. MUNGER, *Agent.*

41 Springfield Fire and Marine Insurance Company.

Renewal receipt, No. 773.

PORTLAND AGENCY, *Nov.* 25, 1861.

Received of proprietors of Union Church twenty-five dollars, being the premium on five thousand dollars, insured under policy No. 331, which is hereby continued in force for one year, to wit, from the twenty-fifth day of November, 1861, at noon, until the twenty-fifth day of November, 1862, at noon.

Not valid unless countersigned by J. W. Munger, agent of this company.

C. FREEMAN, *President.*

Attested: WM. CONNER, Jr., *Sec'y.*
Countersigned: J. W. MUNGER, *Agent.*

PORTLAND, *April 26th*, 1862.

Received of the Springfield Fire and Marine Ins. Co. the sum of thirty-six hundred dollars in full satisfaction for damage by fire to the property covered by this policy, by the fire which occurred on the night of the 15th ult., and hereby cancels this policy.

WM. CHASE, *Chairman of Parish Committee.*
WM. CHASE,
S. C. CHASE,
RUFUS D. BEAN,
J. W. MUNGER, *Trustees.*

42 The defendant also read in evidence the policy of the Continental Ins. Company for one year, dated May 14, 1857, and the renewals thereof, and the receipt of said company, dated April 26, 1862; which policy, renewals, and receipts are in the words and figures following, to wit:

Continental Insurance Co., of the city of New York.

No. 27,156. $5,000.

By this policy of insurance the Continental Insurance Company, in consideration of twenty-five dollars to them paid by the assured hereinafter named, the receipt whereof is hereby acknowledged, do insure the proprietors of the Union Church, Portland, Me., against loss or damage by fire, to the amount of five thousand dollars, on their brick building, with slate roof and brick tower, occupied as a place for public worship, situate on the southerly side of Congress street between High and Park streets, in the city of Portland, Maine, as pr. plan filed No. 3,930, in this office.

$5,000, one year, 50, $25.

$5,000 by Springfield F. & M. Ins. Co.; $5,000 by Howard Ins. Co., of Lowell, and $5,000 by City Fire Ins. Co., New Haven.

And the Continental Insurance Company above named, for the consideration aforesaid, do hereby promise and agree to make good unto the said assured, their successors and assigns, all such loss or damage, not exceeding in amount the sum insured, as shall happen by fire to the property as above specified from the twelfth day of May, one thousand eight hundred
43 and fifty-seven, (at twelve o'clock at noon) until the full end and time of one year thence next ensuing, which term will expire on the twelfth day of May, one thousand eight hundred and fifty-eight, (at 12 o'clock at noon) the said loss or damage to be estimated according to the true and actual cash value of the said property at the time the same shall happen, and to be paid within sixty days after due notice and proof thereof made by the insured in conformity to the conditions annexed to this policy. Provided always, and it is hereby declared, that this corporation shall not

be liable to make good any loss or damage by fire which may happen or take place by means of invasion, insurrection, riot, or civil commotion, or of any military or usurped power, or any loss by theft at or after a fire. And provided further, that in case the assured shall have already made any other insurance against loss by fire on the property hereby insured, and not notified to this corporation and mentioned in or indorsed upon this policy, then this insurance shall be void and of no effect; and if the said insured or their assigns shall hereafter make any other insurance on the same property and shall not, with all reasonable diligence give notice thereof to this corporation, and have the same endorsed on this instrument or otherwise acknowledged by them in writing, this policy shall cease and be of no further effect; and in case of any other insurance upon property hereby in-
44 sured, whether prior or subsequent to the date of this policy, the insured shall not, in case of loss or damage, be entitled to demand or recover on this policy any greater portion of the loss or damage sustained than the amount hereby insured shall bear to the whole amount insured on the said property. And it is agreed and declared to be the true intent and meaning of the parties hereto that in case the above-mentioned premises shall at any time after the making of and during the time this policy would otherwise continue in force, be appropriated, applied, or used to or for the purpose of carrying on or exercising therein any trade, business, or vocation denominated hazardous or extra-hazardous, or specified in the memorandum of special hazards in the terms and conditions annexed to this policy, or for the purpose of storing therein any of the articles, goods, or merchandise in the same terms and conditions denominated hazardous or extra hazardous, or included in the memorandum of special hazards, except herein specially provided for or hereafter agreed to by this corporation in writing, to be added to or endorsed upon this policy, then and from thenceforth, so long as the same shall be so appropriated, applied, or used, these presents shall cease and be of no force or effect. And it is moreover agreed and declared that this insurance is not intended to apply to or cover any books of account, written securities, deeds, or other evidences of title to lands, nor to bonds, bills, notes, or other evidences of debt, nor to money, or bullion, and that this policy is
45 made and accepted in reference to the terms and conditions hereto annexed, which are to be used and resorted to in order to explain the rights and obligations of the parties hereto in all cases not herein otherwise especially provided for.

This insurance (the risk not being changed) may be continued for such further term as shall be agreed on) provided the premium therefor is paid and endorsed on this policy, or a receipt given for the same.

The interest of the insured in this policy is not assignable, unless by consent of this corporation manifested in writing; and in case of any transfer or termination of the interest of the insured, either by sale or otherwise, without such consent, this policy shall from thenceforth be void and of no effect.

This policy shall not be valid until countersigned by Wm. H. Foye, agent at Portland, Me., of said Continental Insurance Company.

In witness whereof, the Continental Insurance Company have caused these presents to be signed by their president and attested by their secretary in the city of New York, this twelfth day of May, in the year of our Lord one thousand eight hundred and fifty-seven.

GEO. T. HOPE, *President.*

M. H. LAMPORT, *Secretary.*

Countersigned, at Portland, this 14th day of May, 1857.

WM. H. FOYE, *Agent.*

REC. 187—3

46 CONTINENTAL INSURANCE COMPANY,
Office No. 18 *Wall st., N. Y.*

No. 88. Received of proprietors of Union Church twenty-five dollars, being the premium or five thousand dollars insured under policy No. 27,156, which is hereby continued in force for one year, to wit, from the twelfth day of May, 1859, until the twelfth day of May, 1860, at noon.

Signed in the city of New York, on the 28 day of June, 1858, but not valid unless countersigned by Wm. H. Foye, agent of this company at city Portland, Me.

GEO. T. HOPE, *President.*

H. H. LAMPORT, *Secretary.*

Countersigned and issued this 12th day of May, 1859.

WM. H. FOYE, *Agent.*

CONTINENTAL INSURANCE COMPANY,
Office No. 18 *Wall st., N. Y.*

No. 232. Received of proprietors of Union Church twenty-five dollars, being the premium on five thousand dollars insured under policy No. 27,156, which is hereby continued in force for one year, to wit, from the twelfth day of May, 1861, to the twelfth day of May, 1862, at noon.

Signed in the city of New York, the 1st day of Dec., 1860, but not valid unless countersigned by Wm. H. Foye, agent of this company at Portland, Me.

GEO. T. HOPE, *President.*

G P , *Secretary.*

Countersigned and issued this 17th day of May, 1861.

WM. H. FOYE, *Agent.*

47 PORTLAND, *Ap'l* 26, 1862.

Received of William H. Foye, agent of the Continental Insurance Company, of the city of New York, his draft, at sight, on said company, for the sum of three thousand and six hundred dollars, which, when paid, will be in full for all claim upon said company for loss and damage to property, consisting of Union Church, brick edifice, situated on Congress street, in the city of Portland, Maine, insured by said company by policy No. twenty-seven thousand one hundred and fifty-six, (27,156,) and which said property was damaged or destroyed by fire, which occurred March 15th, evening. And the said company, in consideration of the premises and of one dollar to us paid, the receipt whereof is hereby acknowledged, is hereby discharged forever from all further claim by reason of said fire, loss, or damage, and policy of insurance, excepting only the obligation to pay said draft, the said claim being adjusted by compromise.

Witness our hands and seals.

WM. CHASE, *Chairman of Trustees.* [SEAL.]
S. C. CHASE, [SEAL.]
RUFUS D. BEAN, [SEAL.]
JOHN W. MUNGER, [SEAL.]
Trustees for the Corporation.

H. L. STURTEVANT.

48 For value received we hereby transfer, assign, and set over unto the Continental Insurance, of N. York, and their assigns, all our title and interest in this policy, and all advantage to be derived therefrom.

Witness our hands and seals this 26 day of April, 1862.

WM. CHASE, *Ch. of Trustees.* [L. S.]
S. C. CHASE. [L. S.]
RUFUS D. BEAN. [L. S.]
JOHN W. MUNGER. [L. S.]

Sealed and delivered in presence of—
H. L. STURTEVANT.

Wm. Chase, called by the defendants, testified that he payed to defendants, out of his private funds, the premiums on original policy and for renewals thereof. On cross-examination he stated he paid these premiums on account of the parish. It was done with the assent of the trustees. Was treasurer of the parish two or three years, paid all the premiums on the three policies and renewals as long as he was treasurer. Charged as treasurer the premiums on other policies to the society, but did not charge premiums paid defendant. Paid these out of my own private purse, but for the parish. Parish was not indebted to G. M. Chase. I was at the time individually indebted to him, and I obtained the policy from defendants
49 to secure G. M. Chase in case of any accident happening to me whilst travelling between the West Indies and Portland.

On recross-examination witness stated that the parish was indebted to him in the sum of $15,000, cash $8,000.

The defendant requested the court to intruct the jury as follows:

First. That there is such a variance between the declaration and the policy offered in evidence in support thereof that plaintiff cannot recover in this cause a loss under said policy.

Second. That the individual interest, if any existed, was insured by said policy, and not any interest he may have had as one of the trustees, and the plaintiff can only recover under this policy the loss or damage to such individual interest.

Third. That the interest described in the policy is the individual interest of William Chase, and not his interest as a trustee, and that such description, if it was intended to apply to the interest as trustee, is a misrepresentation of interest, which, if material, avoids the policy.

Fourth. That if at the time of effecting the policy it was not the
50 intention of the parties to insure the interest of said William Chase, as a trustee of the property, such interest as trustee was not covered by the policy, and the plaintiff cannot recover for any loss or damage to such trustee interest.

Fifth. That if at the time of effecting the policy both parties intended to insure only upon an individual interest of said William Chase in the property, plaintiff cannot under the policy recover for any loss or damage he sustained as trustee.

Sixth. That the property being held in trust by five trustees, under deed of trust of January 22, 1858, one trustee without the authority or concurrence of a majority of the trustees, or cestui que trust, is not authorized to effect insurance in the trust property.

Seventh. That one such trustee cannot effect a valid insurance on the interest vested in him under the trust deed.

Eighth. That there being five trustees of the property, the plaintiff as one, if entitled to recover anything under this policy, can recover only for his interest as trustee in the property, viz: one fifth.

Ninth. That there being two other policies on the property, for
51 $5,000 each, in the Continental and Springfield offices, for the benefit of the cestui que trust, the one fifth held in trust by William Chase was insured by those two policies, and the loss or damage to this interest must be apportioned among the three policies.

Tenth. That if the jury find that there were these two policies in the Continental and Springfield offices, of $5,000 each, on the same property and for the benefit of the same parties as the present policy, and that Wm. Chase as trustee held only the title to one fifth of the property insured, the plaintiff in this action cannot recover more than the one fifth of one third part of the loss or damage sustained.

Eleventh. That of William Chase had no other interest in the property than as one of five trustees, under deed of January 22, 1858, and the jury find that he procured this policy with his own funds, and with the intention to secure his individual creditor in case of loss, then the plaintiff cannot recover in this action under said policy.

Twelfth. That if the intention of Wm. Chase, in effecting said insurance, was to secure his own private debt to plaintiff and the amount insured in the policy was made payable to plaintiff for that purpose, then the
51½ plaintiff cannot recover in this action upon proof of the interest of said Wm. Chase as trustee.

Each and all of which instructions and requests of the defendants were then and there refused by the court; to which refusal and each and every of them the defendant then and there, in open court and before the case was committed to the jury, excepted, and prayed of the court that said exceptions and each of them might be allowed.

The plaintiff requested the court to instruct the jury as follows:

First. That if William Chase jointly with others held the insured property in trust, he had a legal interest in the property and an insurable interest therein, and may effect insurance thereon in his own name without specifying the trust in the policy.

Second. That the deed to William Chase and others in trust gave to William Chase a legal interest in the property and an insurable interest therein, and he may effect insurance thereon in his own name without specifying the trust in the policy.

Third. That if the agents of defendants, who issued and countersigned the policy, knew what interest William Chase had in the property insured, and that it was a trust interest, and with such knowledge entered into this contract and issued this policy on behalf of defendants, the defendants cannot object that the nature of the interest is not specified in the policy.
52

Each of which instructions and requests of the plaintiffs, were also refused by the court. But the court did instruct the jury as follows, viz:

First. That if William Chase, jointly with others, held the insured property in trust, he had a legal interest in the property, and consequently had an insurable interest therein, and might effect insurance on the whole property in his own name, for his individual interest in the same.

Second. That the deed to William Chase and others in trust gave to William Chase an insurable interest in the property therein described, and that he in virtue of that interest, and with the assent of the other trustees therein named, might effect a valid insurance on the whole property in his own name, for the benefit of the trustees or proprietors, if he described in the policy the nature of his own interest in the property, or of the trustees or proprietors.

53 Third. That where the insured, as in this case, is a trustee, and in fact insured the property as such trustee, (if you find he did,) the omission to describe the character in which he acted and the nature of his interest in the same, will not render the policy unavailable to any extent, unless the nature of the interest in the insured as trustee was such that if it had been described in the policy it would or might have had a real influence upon the underwriter, either not to underwrite at all or not to underwrite except at a higher premium than the one paid by the insured.

Fourth. That where the nature of the trustees' interest in the property is such that if described in the policy it would or might have such an influence upon the underwriter, (that is, either not to underwrite at all or not to underwrite except at a higher premium than the one paid in the case,) then the omission to give the description of the nature of the trustees' interest in the property must be regarded as a matter material to the risk, and the trustee can only record the amount of the loss of his own insurable interest in the property.

Fifth. That the question whether the interest held by William Chase as trustee in the property in this case was such that the description of the nature of it, if it had been given in the policy, would or might have had any substantial influence upon the underwriters, either not to underwrite at all or not to underwrite except at a higher premium than the one paid, is a ques-
54 tion of fact for your determination upon the whole evidence in the case.

Sixth. That if you find under the preceding instruction that the nature of the interest in the property held by William Chase as trustee was not such as would might have had any substantial influence upon the underwriters, either not to underwrite at all or not to underwrite except at a higher premium than the one paid, then I instruct you that William Chase, if you find that he, jointly with the others named in the deed, held the property insured in trust, might, with the assent of the other trustees, effect insurance on the whole property in his own name, as in this case, for the benefit of the trustees or proprietors without describing the nature of his interest in the policy.

Seventh. That if you find under the fifth instruction that the nature of the interest of the insured as trustee was such that the description of it in the policy would or might have had a substantial influence upon the underwriter, either not to underwrite at all or not to underwrite except at a higher premium than the one paid, then I instruct you that William Chase could not effect a valid insurance on the property, except to the extent of his own insurable interest, without describing in the policy the nature of his interest therein, and consequently the right of the plaintiff to recover in this
55 action must be limited accordingly, but it will include the loss to the entire insurable interest to Wm. Chase, subject to the apportionment hereinafter explained.

Eighth. That inasmuch as there were two other valid policies on the same property at the time of the fire and loss, each for the sum of five thousand dollars, the plaintiff is entitled to recover only for one third of the loss proved, whether the jury find under the preceding instructions that the whole property was insured for the benefit of the equitable owner or only the insurable interest of Wm. Chase.

Whereupon, and before the cause was committed to the jury, the defendant then and there, by his counsel, except to the aforesaid, to which reference is hereby made, and to the rulings, directions, and instructions so by the court given to the jury, and numbered as follows: one, two, three, four, five, six, and seven, and prayed that said exceptions and each of them might be allowed.

The jury returned a verdict for the plaintiff, assessing his damage at $5,228 99.

And inasmuch as the matters, hereinbefore referred to, and said rulings and instructions of the court so objected to, would not otherwise appear by the record of said cause, the counsel on the part of said defendants prayed the court to set their seal to this bill of exceptions, containing the several mat-
56 ters so proved, admitted, and given in evidence, or offered to be given in evidence, and the rulings and instructions of his honor thereupon, and the exceptions thereto, that the same may become a part of the record of said cause; all of which being found to be true, are allowed.

In witness whereof, I have hereunto set my hand and seal this day of October, in the year of our Lord one thousand eight hundred and sixty-four.

NATHAN CLIFFORD,
Associate Justice, Supreme Court of the U. S.

MAINE DISTRICT, *ss:*

Filed Oct. 1, 1864.
Attest: GEO. F. EMERY, *Clerk.*

Filed November 23, 1864.

Supreme Court of the United States.

DECEMBER TERM, 1866.

No. 106.

THE HOWARD FIRE INSURANCE CO.

vs.

GRANVILLE M. CHASE.

Brief of Plaintiffs in Error.

1. There is a fatal variance between the allegation of interest in the declaration and the proof.

The allegation is, that William Chase was "the owner and possessor in trust," &c.—p. 5.

The proof offered was, that William Chase was one of five trustees.—p. 11.

The defendant's counsel requested the court to instruct the jury that this variance between the allegation of interest and the proof was fatal.—1st request, p. 19.

This request was refused.—p. 20.

This instruction should have been given.

An averment of an entire interest is not supported by proof of a joint interest.

Groves vs. Boston Mar. Ins. Co., 2 Cranch, 419.
Phillips on Insurance, 3d ed., vol. 2, § 20, 21, p. 614.
Bell vs. Ansley, 16 East, 141.
Cohens vs. Harrison, 5 Taunton, 101.
Cartlett vs. Keith, 1 Paine, 594.
Bingher & al. vs. Col. Ins. Co., 17 Barbour, 274.

2. Regarding the insurance as "for the parish," the plaintiff is limited by the proof of the interest of William Chase, as trustee—viz: one-fifth, as he was only one of five trustees.—p. 11.

1. Because he had no other interest.—p. 11.

2. Because he does not aver that anything more than his individual interest was insured, and the policy contains no formal words—as "for whom it may concern."—p. 8.

The court was requested so to instruct the jury—(8th request, p. 19); which instruction was refused.—p. 20.

This instruction should have been given.

Cases cited under 1st point.
Phillips on Ins., vol. 1, § 380.
Dumas vs. Jones, 4 Mass R., 647.
Pearson vs. Lord, 6 Mass. R., 81.
Fenney vs. Warren Ins. Co., 1 Met., 15.
Same vs. Bedford Ins. Co., 8 Met., 348.
Turner vs. Burrows, 5 Wendell, 541.

3. If the preceding point is sound, then, as there were two other policies on the same property to an equal amount each, for the benefit of the same parties, the plaintiff in this action can recover only one-fifth of one-third, on the same principle.

The court was requested so to instruct the jury—(10th request, p. 20), and refused.—p. 20.

4. The proof shows that William Chase, having no other interest than as trustee, in fact insured the property for his individual benefit, and not "for the parish."

Policy, p. 8.
Testimony of Chase, p. 19.

The court was requested to instruct the jury that if William Chase had no other interest than as trustee, and

insured the property in terms for his individual benefit, he could not recover—(11th and 12th requests, p. 20); which requests were refused.—p. 20.

Such insurance is void, either with or without notice to insurers.

1. Because insurance is simply a contract of indemnity, and the insured had no personal interest for the loss of which he could be indemnified.

2. Because if without notice to insurers, it is a fraud upon them. One of the first elements, entering into the question of *risk*, is the interest of the assured to protect the property. If he has no pecuniary interest in the trust property, as in case of a mortgage, it is for his benefit that a loss should occur, for he is thereby benefited. By refusing the instructions requested, the attention of the jury was diverted from this point.

3. Whether with or without notice, such insurance is void, because against public policy, tending to create an interest in the destruction of the property, and adverse to the interest of the *cestui-que-trust*.

FESSENDEN & BUTLER,
for Plaintiffs in Error.

Supreme Court of the United States.

THE HOWARD FIRE INSURANCE CO.

Plaintiff in Error,

v.

GRENVILLE M. CHASE.

ARGUMENT FOR DEFENDANT IN ERROR.

SUPREME COURT OF THE UNITED STATES.

THE HOWARD FIRE INS. CO., *Plaintiff in Error*,

v.

GRENVILLE M. CHASE.

ARGUMENT FOR DEFENDANT IN ERROR.

THE COURT will perceive by the record in the case that on January 22, 1858, Sewall C. Chase and William Chase, in accordance with a previous vote of the Union Congregational Parish, conveyed by deed of warranty to William Chase and four others a lot of land with the buildings thereon, *in trust for the Union Congregational Church and Parish.* The grantees accepted the trust. Upon the lot of land stood the Union Church; and on November 25, 1859, insurance was effected, and several policies issued upon that Church, describing it as the Union Congregational brick and slated Church. Some of these policies run to the Union Congregational Church: but one of them—the one now submitted to the consideration of the Court—was taken out in the name of William Chase, one of the Trustees.

The Howard Insurance Company, "insure William Chase against loss or damage by fire to the amount of $5000, on the Union Congregational brick and slated Church, situate" &c. The policy is renewed from time to time, and the premiums paid; the Church is at last destroyed by fire; the necessary proofs are furnished, of the sufficiency of which no question is

here made; and the Insurance Company then decline paying the loss, upon the ground that William Chase never had any insurable interest, and they never made any valid contract with him.

Upon these points we take issue with this Insurance Company; the case is submitted to a Jury under certain rulings and instructions, and a verdict rendered against the Company. The correctness of the rulings and instructions is now before this Court for its consideration.

I may be permitted to say that a more just, and even honorable claim, was never presented to a Court of Justice; while the objections taken by the Insurance Company are most unjust under the circumstances, technical in the extreme, and unbecoming even an Insurance Company.

The Plaintiffs in error first object to the admission of the policy and renewals in evidence, on the ground of *a variance* between the interest insured by the policy, and that set forth in the declaration; the Court overrule the objection, and with much propriety as we apprehend. The interest set forth in the declaration is an interest as *trustee*—"that one William Chase, on November 25, 1859, was the *owner and possessor in trust* of the Union Church" &c.—and what is there in the policy inconsistent with or at variance with this allegation? In what part of the policy is there any statement or representation of the particular interest insured by the policy? I do not discover any. In no part of the policy does William Chase represent himself as *the absolute owner* of the property insured; nor is there in any part of the policy any either direct or indirect representation that he owned the building as *his own individual estate.* Nor is it to be even inferred, from the absence of any statement to the contrary, that he was the absolute owner. There are many sentences in the policy—for instance, that which requires him in case of loss to render a statement of "*his interest therein*"—inconsistent with, and even negativing such an inference.

The only inference to be drawn from the terms of the policy, or in other words the only statement in the policy is, that William Chase had *an insurable interest* of some kind in the property. It is submitted, that there is no variance between the policy and declaration in this particular, and that the ruling of the Court below was correct.

The Plaintiffs in error next offered in evidence duly authenticated copies of a mortgage of the Church and lot in question from the Trustees to William Chase, dated January 27, 1858; and of an assignment of said mortgage from William Chase to Josiah and Neal Dow, dated July 1, 1859. These were offered for the purpose of showing that William Chase had no insurable interest in the property at the time of taking out this policy. The present Defendant in error (then Plaintiff) objected that said papers were not admissible for any such purpose, and did not show that said William Chase had no insurable interest. The Court excluded the papers; and the correctness of that ruling is before this Court for consideration. The Court perceive that under the instrument of January 27, 1858, William Chase became a mortgagee; and it is submitted, that by the assignment of July 1, 1859, he transferred only the rights and interests which he had *as mortgagee*. In the assignment he describes himself as "the within named mortgagee"; and although in describing what he transfers, he uses the words "all my right, title and interest in and to the real estate herein mentioned", still these latter words are to be construed in connection with what precedes them, and in connection with the whole instrument and the whole transaction. And is it not apparent upon the face of the papers, that Chase conveyed and Dow received only the interest which William Chase held *as mortgagee?* The assignment was made *upon the mortgage deed;* and when William Chase speaks of "all his right, title and interest", he means all his right, title and interest under that mortgage. Had it been intended to convey any other or greater interest, a dif-

ferent form of conveyance would have been used. After the making of the mortgage, William Chase still retained (subject to the mortgage) all his rights and interests *as Trustee;* and these rights and interests (as Trustee) he never conveyed, and never could convey consistently with his duties and obligations as Trustee. The Court will perceive that the mortgage has been long since paid and discharged; and all the Trustees hold their original trust title free of any incumbrance. It is submitted, that the excluded papers did not prove, and had no tendency to prove, that for which they were offered; and that the ruling of the Court below on this point was correct.

The present Plaintiff in error then submitted to the Court certain requests for instructions to the Jury; all which the Court declined to give, except so far as they were embraced in the instructions actually given.

Upon the first request, I have already submitted the views we entertain; and have shown, as I trust, that there is no such variance between the declaration and the policy as should defeat the action. And the requested instruction was properly declined.

Upon the second and third requests, I have already endeavored to show that there is nothing in the policy—no expression or intimation—confining its operation to *the individual interest* of William Chase, as distinguished from and independent of *his interest as Trustee;* no particular interest is set forth, either in the policy or in any application preliminary to the policy. The insured must have *some interest*, and an *insurable interest;* but he need not describe it, unless the omission to do so is material to the risk—(and this latter point, the materiality of the omission, the Court will perceive was fully covered by the instruction actually given)—and as no particular interest was actually described in the policy, it is difficult to perceive how there was a misrepresentation of interest. It is

submitted, that the second and third requested instructions were properly withheld.

The fourth and fifth requests are substantially the same. They attempt to bring into the case *the intention of the parties*. The question in this case is not, what was it the intention of the parties to do?—but, *what did they do?* It is to be presumed that they intended to do what they actually did—to make the contract which they actually made. Parol evidence is not admissible to vary the written contract or policy; and it is not needed to explain it, the contract being perfectly intelligible. Finnly *v.* Bedford Com. Ins. Co. 8 Metc. 348. If the contract *actually entered into*—the policy actually made—covered (as we think we have already shown) the trustee interest held by William Chase, then it is immaterial what was the intention of the parties aliunde the policy; and the fourth and fifth requested instructions were properly declined by the Court below.

The sixth requested instruction is somewhat indefinite, and very general in its terms. It purports to assert that one of several Trustees, without the previous authority or concurrence of a majority of his associates, or of the cestui que trust, cannot effect insurance in any manner, not even in the name of all the Trustees, upon the trust estate. Such a doctrine we apprehend cannot be sustained by either principle or authority; and the requested instruction was properly withheld. Each and every Trustee has authority to do any act *for the benefit* of the estate, and such act will be binding on all. Hill on Trustees, 305-6, (2d Am. Ed. 429.)

The seventh and eighth requests appear to assume that where there are several Trustees, each has only a fractional interest in the trust estate: that William Chase in this case held only *one-fifth part* of the trust estate. Such we apprehend is not the relation of co-trustees to, or their interest in the trust estate. They hold as joint tenants; they have a unity of title, and of

possession. The act of one for the benefit of the estate is the act of all. The interest of one is the interest of all. An insurance upon the interest of one is, to the amount of the policy, an insurance upon the interest of all. Should one Trustee take out a policy upon what he should describe as *his interest*, such a policy would enure to the benefit of the trust estate and of all the Trustees. These requests being, as we submit, based upon an erroneous view of the interests of co-trustees, were properly withheld.

The ninth requested instruction was given by the Court in their eighth instruction; and the verdict returned was in accordance therewith.

The tenth requested instruction appears to be based upon what we consider the erroneous view of the rights and interests of co-trustees before alluded to. William Chase was a Trustee of *the whole estate*, and not of one-fifth of it; and so of each of his co-trustees. He insured $5000 in this Company upon *the whole trust estate;* and is entitled to recover, under this one of three policies of equal amount, one-third of the whole loss sustained, and not one-fifth of one-third. The Court below with great propriety declined to give this tenth requested instruction.

In reference to the eleventh and twelfth requested instructions, we submit that the testimony shows that William Chase paid the premiums on this policy *on account of the parish;* but if the premiums were paid—no matter by whom, or on whose account—and William Chase had an insurable interest, he is entitled to recover, without reference to his intentions *aliunde the policy* in effecting the insurance; and these requested instructions were with great propriety refused.

We come now to a consideration of the instructions actually given, and under which the case was submitted to the Jury, and a verdict returned for Plaintiff.

And here I beg leave to call the attention of the Court to some facts connected with this Policy. Your Honors will perceive that this Policy, as also the Springfield, were issued and countersigned by J. W. Munger as Agent for the several Insurance Companies. This same J. W. Munger was one of the Trustees—one of the co-trustees of William Chase. He issued the Springfield Policy to "the Proprietors of Union Congregational Church", and in it speaks of "$5000 other insurance in Howard Fire Ins. Co., Lowell, Mass.", (meaning the Policy at bar). He issues the Policy at bar from the Howard Office to William Chase, and in it speaks of $5000 other insurance in the Springfield Company. Can there be any question then that this Company well knew through their Agent what they were insuring—what interest they were protecting? Can there be any question that this Company well knew through their Agent that Wm. Chase had no interest in the insured property except *in the capacity of Trustee*—and that with that knowledge they made this contract and issued this Policy, and insured the trustee interest of William Chase? If they did not insure the trustee interest, what did they insure? They knew that William Chase had no other interest; and when they pocketed the premium, they either insured the trustee interest of William Chase, or they committed an act of swindling by obtaining money under false pretences. I commend to the Howard Fire Insurance Company a judicious choice between these two positions.

The Court will also perceive that there is nothing in the Policy, or in any application preliminary to the Policy, calling for a particular statement of the particular interest held by the assured in the property covered.

The substance of the instructions given in the Court below, is as follows:—

That if William Chase jointly with others held the insured property in trust, he had a legal interest therein, and an insura-

ble interest, and might insure his interest in his own name; and with the assent of the other Trustees might insure the whole property in his own name for the benefit of the Trustees or Proprietors, if he described in the policy the nature of his interest, or that of the Trustees or Proprietors. That the omission to describe the character in which he acted, and the nature of the interest, will not affect the policy, unless such omission is material to the risk—of which materiality the Jury will determine. That if Jury find omission not material, William Chase could with the assent of the other Trustees insure the whole property in his own name, as in this case, for the benefit of the Trustees or Proprietors, without describing his interest. That if Jury find omission material, William Chase could only insure to the extent of his own insurable interest, unless he described the nature of his interest. That as there are two other policies of similar amounts, Plaintiff can here recover only one-third of the loss proved.

These instructions, we apprehend, are open to no exceptions on the part of the original Defendant, now Plaintiff in error.

That William Chase in his capacity of Trustee had *a legal interest* in the property, we presume will not be questioned: and that having such legal interest, he had *an insurable interest*, is, as we understand, perfectly well settled. It seems hardly proper to cite authorities upon a principle so clear and well understood: but we will refer to 1 Phillips on Insurance, ch. 3, sect. 4; Hill on Trustees, 392, (2d Amer. Ed.)

And that William Chase might effect insurance upon his interest (whatever that interest might be, or by whatever name it might be designated,) in his own name, we believe to be also well settled law. Mr. Phillips, in his Treatise on Insurance, vol. 1, p. 167, art. 293, says: "A Trustee has a legal interest in the thing, and may therefore insure; he may represent the property to be his own, and the policy may be in his own

name." Angell on Fire and Life Insurance, p. 114, § 73, lays down the same principle, citing cases in its support. This doctrine has been recognized for years in a series of harmonious decisions.

Carruthers *v.* Sheddon, 6 Taunton, 15.
Crowley *v.* Cohen, 3 Barn. & Adolph, 478.
Bartlett *v.* Walter, 13 Mass. 267.
Phinney *v.* Warren Ins. Co., 1 Metcalf, 16.
King *v.* State Mutual Ins. Co., 7 Cushing, 1, (13).
Tyler *v.* Ætna Ins. Co., 12 Wend. 512.

In this latter case, the opinion of the Court was delivered by Mr. Justice Nelson, and many of the previous decisions were adverted to and approved.

Same case affirmed in 16 Wend. 385.

Even a *mere equitable interest* may be insured by the holder thereof in his own name, without stating the particular nature of his interest. In the case in Barn. & Adolph, Lord Tenterden says that "although the subject matter of the insurance must be properly described, the nature of the interest may in general be left at large." And Mr. Justice Parke added, that "the particular nature of the interest is a matter which only bears on the amount of damages; it is never specially set out in a policy." In the case in Cushing, the Court say: "It is the result of all the cases, that a mortgagee has an insurable interest; that he may insure generally on the property, and need not disclose the peculiar nature of his interest, unless inquired of." In reference to a disclosure by the assured of the peculiar nature of his interest, in addition to the cases already cited, we refer to

Locke *v.* North Amer. Ins. Co., 13 Mass. 61.
Bixby *v.* Franklin Ins. Co., 8 Pick. 86.
Curry *v.* Commonwealth Ins. Co., 10 Pick. 535.

All deciding that it is not necessary to disclose to the insurer

the nature of the title, unless asked for—that the insured may describe it generally, unless required to state his interest.

And it follows from the above principles, that one of several Trustees,—such one having, as we think we have already shown, a legal interest *in the whole estate*, and not merely an interest *in a fractional part*,—may effect a valid insurance *upon the whole property* in his own name; and such an insurance would be for the benefit of all the Trustees or Proprietors. Indeed it seems difficult to perceive how he could effect insurance otherwise than upon *the whole property*, and for the benefit of all the Trustees or cestui que trusts. His act in effecting insurance is for the benefit of the estate, and consequently of all interested in the estate; and Phillips so lays down the law. 1 Phillips on Insurance, 166, ch. 3, sect. 4, art. 288. "A Trustee has, as such, an insurable interest in the trust property to its full value."

And we apprehend that it would necessarily follow that he may effect such insurance, if for the benefit of the estate, (as it would under all ordinary circumstances be presumed to be,) even without the assent of his co-trustees. That he may do it *with the assent of the co-trustees*, would appear to be unquestionable. And if, in addition to the assent of his co-trustees, he describes in the policy *the nature of the interest insured*, it seems difficult to imagine how the validity and sufficiency of the policy can be even questioned. And the instruction of the Court, that William Chase with the assent of the other Trustees might insure the whole property in his own name for the benefit of the Trustees or Proprietors, if he described in the policy the nature of his interest or that of the Trustees, is, as we apprehend, too favorable to the present Plaintiffs in error to be on their part a matter of exception. The original Plaintiff might complain that the instruction was too restrictive; but clearly the original Defendant could not complain that it was too broad.

The instruction of the Court below, "that the omission to describe the character in which he acted, and the nature of the

interest, will not affect the policy, *unless material to the risk*— of which the Jury will determine", is in accordance with well settled principles and decisions. Insurance Companies do not generally consider such matters material; and applications for insurance very seldom contain any statement of the nature or extent of the applicant's interest. In this case the Insurance Company made no inquiry; and on the part of the assured, there was a mere omission to disclose a matter, *about which the Insurance Company asked no questions.* It is one of the commonest principles of the law of insurance, that such an omission does not affect the policy, *unless the omitted matter be material to the risk*—and of that materiality it is the province of the Jury to decide. This whole subject is fully considered and discussed in Angell on Fire and Life Insurance, § 151, 152, 175, 176, 183, and the numerous cases cited.

Nor does the case of Columbian Insurance Company *v.* Lawrence, decided by this Court, and reported in 2 Peters, 25, (understood to be relied upon by Plaintiff in error,) conflict with these principles and decisions, and the instruction of the Court below. The Court are aware that the question there was upon *the correctness of a representation.* Did the application for insurance truly state the interest of the assured? The offer described the property as *belonging to Lawrence and Poindexter*, and afterwards stated it to be *their stone mill.* The insurers were made to believe that the assured owned the property; whereas one-half was held under *a mere executory contract.* The Court were of opinion that so precarious a title was not such a one as *was described in the application.* Chief Justice Marshall in delivering the opinion of the Court says: "In all the treatises on insurances, and in all the cases in which the question has arisen, the principle is, that a misrepresentation, which is material to the risk, avoids the policy. In this case, the Circuit Court has decided that there is no misrepresentation: that the interest of the assured was truly described in the offer

for insurance; and consequently, no question on the materiality of the supposed variance was submitted to the Jury." The Chief Justice says that the Circuit Court erred in instructing the Jury that there was no misrepresentation; and most distinctly intimates that the question of the materiality of the variance should have been *submitted to the Jury*. Such was the course adopted in the case at bar, in accordance with well settled principles, and in recognition of the case in 2 Peters.

See also Angell on Fire and Life Insurance, § 186, 187, and notes.

The remaining part of the instructions are only the consequences and deductions from the principles before laid down; and we believe there is nothing in them to which the present Plaintiff in error can with propriety take any exception.

In conclusion, we apprehend that the principles of law were fully and correctly laid down by the Court. We know that the verdict is in strict conformity to the justice of the case. The Howard Insurance Company entered into this contract with full knowledge of all the facts—even if these facts are not all set forth in the policy; with full knowledge of what they were insuring, and whom they were insuring. They have been paid for the risk—they should bear the loss. They have received the consideration—they must take the consequences.

JOHN RAND,

Counsel for Def't in error.